IN THE

SUPREME COURT OF THE UNITED STATES
October Term, 1970

No. 5175

ADOLFO and EMMA PEREZ,
Petitioners,

v.

DAVID H. CAMPBELL, Superintendent, Motor Vehicles Division, Arizona Highway Dept., etc., et al.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF THE NATIONAL ORGANIZATION FOR WOMEN AS AMICUS CURIAE

Heather Sigworth
College of Law
University of Illinois
Urbana, Illinois
Attorney for The National Organization for Women, Amicus Curiae

William D. Browning
Estes, Browning & Zlaket
of Counsel

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

No. 5175

Adolfo and Emma Perez,
Petitioners

v.

David Campbell, Superintendent,
Motor Vehicle Division, Arizona
Highway Dept., etc., et al.,
Respondents

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

Motion for Leave to File a Brief Amicus Curiae on Behalf of Petitioner, Emma Perez, by the National Organization for Women

Leave is requested by the National Organization for Women to file a brief amicus curiae in the above captioned case for the following reasons.

Emma Perez, solely by virtue of her status as wife in a community property

state has been and is deprived of the valuable right to drive an automobile.

The deprivation of Emma's driving privileges effects not Emma alone but also has wide impact as to others similarly situated.

Because the primary emphasis in the court below and the primary emphasis here is on the bankruptcy issue, and Emma's claim, perforce, is a secondary issue, it has not had and will not have as thorough an analysis as it merits.

Therefore, the National Organization for Women respectfully requests this Court to grant leave to file this brief amicus curiae.

The consent of all parties herein has been requested. The petitioners have given their consent. The respondents have refused their consent.

Respectfully submitted,

Heather Sigworth

Heather Sigworth
College of Law
University of Illinois
Urbana, Illinois

Attorney for the National
Organization for Women

INDEX

CITATIONS

CASES.

Constitutional and statutory provisions:

Miscellaneous:

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1970

No. 5175

ADOLFO and EMMA PEREZ,

Petitioners,

v.

DAVID H. CAMPBELL, Superintendent, Motor Vehicle Division, Arizona Highway Dept., etc., et al,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

---

BRIEF OF THE NATIONAL ORGANIZATION FOR WOMEN AS AMICUS CURIAE

STATEMENT OF INTEREST

The National Organization for Women (N.O.W.) founded in 1966 has 5,000 women and men members. The organization is dedicated solely to securing for all women equal rights with men. N.O.W. believes that a society cannot call itself civilized, that it does damage to its economy, distorts its social values, and demeans its system of justice

when half of its citizens suffer abridgement of their civil rights.

Emma Perez, a petitioner in the instant case has been deprived of the valuable, and indeed almost essential right, Schecter v. Killingsworth, 93 Ariz. 273, 380 P.2d 136 (1963), to drive a car merely because of her status as a wife in a community property state.

N.O.W. believes that the essential unfairness shown to Emma Perez does not stop here, but has important implications for other wives in community property states. Under Arizona community property law Emma has no managerial or decision making powers and no control of the community assets; she could neither control the operation of the Perez automobile nor insure the community, yet the decision of the Court of Appeals would impose upon her the responsibility for her husband's operation of the automobile and for his failure to obtain insurance.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article 1, Section 9, Clause 3

No Bill of Attainder or ex post facto law shall be passed.

Fourteenth Amendment

§1 . . . nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Arizona Revised Statutes Annotated (1956)

Section 28-1142A (as amended, Supp. 1970)

A. The superintendent shall, within sixty days after the receipt of a report of a motor vehicle accident within this state which has resulted in bodily injury or death or damage to the property of any one person in excess of one hundred dollars, suspend the license of each operator and all registrations of each owner of a motor vehicle in any manner involved in such accident, or, if the operator is a non-resident, the privilege of operating a motor vehicle within

this state, or, if the owner is a nonresident, the privilege of the use within this state of any motor vehicle owned by him, unless such operator or owner or both shall deposit security in a sum which is sufficient in the judgment of the superintendent to satisfy any judgment or judgments for damages resulting from the accident as may be recovered against the operator or owner . . . .

. . . .

Section 28-1162A

A. The superintendent upon receipt of a certified copy of a judgment, shall forthwith suspend the license and registration and nonresident operating privilege of a person against whom the judgment was rendered, except as otherwise provided in this section and §28-1165.

Section 28-1163B

B. A discharge in bankruptcy following the rendering of any such judgment shall not relieve the judgment debtor from any of the requirements of this article.

Section 28-1165

A. A judgment debtor upon due notice to the judgment creditor may apply to the court in which the judgment was rendered for the privilege of paying the judgment in installments and the court, in its

discretion and without prejudice to any other legal remedies which the judgment creditor may have, may so order and fix the amounts and times of payment of the installments.

B. The superintendent shall not suspend a license, registration or nonresident operating privilege, and shall restore any license, registration or nonresident operating privilege suspended following nonpayment of a judgment, when the judgment debtor gives proof of financial responsibility and obtains an order permitting the payment of the judgment in installments, and while the payment of any installment is not in default.

C. In the event the judgment debtor fails to pay an installment as specified by the order, then upon notice of the default, the superintendent shall forthwith suspend the license, registration, or non-resident operating privilege of the judgment debtor until the judgment is satisfied, as provided in this chapter.

Section 25-211B

B. During coverture, personal property may be disposed of by the husband only.

Section 25-213A & B & C

A. All property, real and personal, of the husband, owned or claimed

by him before marriage, and that acquired afterward by gift, devise or descent, and also the increase, rents, issues and profits thereof, is his separate property.

B. All property, both real and personal, of the wife, owned or claimed by her before marriage, and that acquired afterward by gift, devise or descent, and also the increase, rents, issues and profits thereof, is her separate property.

C. The earnings and accumulations of the wife and the minor children in her custody while she lives separate and apart from her husband are the separate property of the wife.

QUESTION PRESENTED

May the State of Arizona deprive a wife of her right to drive simply because her husband was involved in an automobile accident.

STATEMENT OF FACTS

Adlopho Perez was driving alone on July 8, 1965, in an automobile registered in his name alone. Emma Perez who was and is the wife of Adolpho was not in the car. Adolpho's car collided with one owned by Leonard and Janice Pinkerton.

At the time of the accident, Adolpho Perez did not have automobile liability insurance.

Adolpho's driver's license, but not Emma's,was suspended pursuant to §28-1142A. At the end of one year, no civil suit having been filed, Adolpho applied for and secured the return of his license. Emma retained her license throughout this period because §28-1142A. A.R.S. operates to suspend only "the license of each operator and all registrations of each owner . . . ."

In 1966 suit was commenced by the Pinkertons against Adolpho and Emma as husband and wife. In 1967 Adolpho confessed judgment. Emma, too, confessed judgment, but solely because she was obliged to do so under Arizona community property law. Perez v. Campbell, 421 F.2d 619, 623 (1970) citing Donato v. Fishburn, 90 Ariz. 210, 367 P.2d 245 (1961). The community was unable to pay the judgment because of poverty. Emma and Adolpho filed petitions in bankruptcy in 1967. Their debts, including the judgment owed the Pinkertons,

were discharged.

Then, although for more than a year Adolpho had been deemed legally competent to drive, because of the unsatisfied judgment his license was suspended in 1968. This time Emma's license to drive was taken from her as well, allegedly under authority of A.R.S. §28-1162A. This statute authorizes the Director of Motor Vehicles to suspend the driver's license of a "person against whom the judgment was rendered." Emma is such a "person" solely because she was the wife of Adolpho, the tortfeasor, and was obliged to confess judgment under Arizona community property law.

At this moment Emma Perez, who, for all that is shown in the record, is a careful and fault-free driver, is without her license solely because she is the impecunious wife of an impecunious, negligent driver in a community property state.

SUMMARY OF ARGUMENT

It is appropriate to invoke the awesome power of the Constitution when a state has stepped beyond the legitimate boundaries of its police power to deprive one of its citizens of a valuable right. It is all the more appropriate when the citizen is powerless by any amount of diligence to avoid the result.

Revoking the driver's license of a non-negligent wife who, under local community property law, was obliged to confess judgment along with her negligent husband, Perez v. Campbell, 419 F.2d 619 (1970); Donato v. Fishburn, 90 Ariz. 210 367 P.2d 245 (1961), offends against constitutional prohibitions.

First, infliction of such penalty upon the non-negligent wife without benefit of hearing or trial denies her due process of law. Indeed the most elementary legal inquiry would have revealed that Emma Perez had committed no offense against the state's traffic laws, could not have prevented her husband's negligence, and could not have released community funds to satisfy the community debt incurred by her husband's negligence.

Second, a wife who can neither control her husband's use of the community automobile (A.R.S. §25-211B) nor expend community funds to secure automobile liability insurance (Id.) is plainly powerless to escape from the operation of the state's Financial Responsibility Act. Thus she is a member of an inescapable class of wives in community property states; punished without personal fault. The application of the Act to her is, therefore, a bill of attainder. United States v. Brown, 381 U.S. 437 (1965); United States v. Lovett, 328 U.S. 303 (1946).

Third, the class of innocent and powerless wives in community property states bears no rational relationship whatsoever to the purpose of the Financial Responsibility Act which is to afford to injured motorists a remedy for collecting their judgments. The revocation of Emma Perez' driver's license by virtue of her membership in this class is invidiously discriminatory and denies equal protection of law.

ARGUMENT

I.

THE STATE SHOULD NOT REVOKE THE CITIZEN'S RIGHT TO DRIVE WITHOUT COMPELLING REASON.

Without stopping to decide whether a driver's license is a property right within the meaning of the due process clause, it is certain that whatever its label, it has great value. The Arizona Supreme Court has determined that it is a right, not a mere privilege. Schecter v. Killingsworth, 93 Ariz. 273, 280, 380 P.2d 136, 140 (1963).

> In this day, when the motor vehicle is such an important part of our modern day living, when the use of the vehicle is so essential to both a livelihood and the enjoyment of life, this Court recognizes that the use of the public highways is a right which all citizens posses, subject, of course, to reasonable regulation under the police power of the sovereign. Id. at 280, 380 P.2d at 140.

The Congress as well has recognized the need for transportation.

> . . . [T]he Congress finds that the rapid urbanization and the continued dispersal of population and activities within urban areas has made the ability of

> all citizens to move quickly and at a reasonable cost an urgent national problem . . . . Urban Mass Transportation Assistance Act of 1970 (P.L. 91-453).

What then is the compelling interest which prompted the State of Arizona to take away the license of the innocent, non-negligent wife of an impecunious, negligent husband?

The Court below in its opinion, Perez v. Campbell, 421 F.2d 621 at 624, says the Act "bears a real and substantial relationship to public safety." But this is not so. The relationship is tenuous at best. This is evident from the fact that careless and dangerous drivers of means are unaffected by the Financial Responsibility Act. It operates only against indigent drivers.

> The Financial Responsibility Act has for its principal purpose the protection of the public using the highways from financial hardship which may result from the use of automobiles by financially irresponsible persons.
>
> . . . .
>
> . . . [T]he promotion of highway safety is not the primary objective of this particular law. Schecter v. Killingsworth, 93 Ariz. 273, 281, 380 P.2d 136, 140 (1963).

What the Arizona Supreme Court had to say about the general import of the Financial Responsibility Act applies with greater force to A.R.S. §28-1162A under which Emma's license was suspended. Plainly the sole purpose of this Section is to provide a creditor's remedy beyond those normally available to a judgment creditor; it may inferentially serve to prevent innocent, injured motorists from being forced onto the welfare rolls. Escobedo v. State Dept. of Motor Vehicles, 35 Cal.2d 870, 222 P.2d 1 (1950); Schecter v. Killingsworth, 93 Ariz. 273, 280, 281, P.2d 136, 140 (1963).

Whether or not the creation of what amounts to a super-judgment collection agency in the State Capitol solely for the benefit of a certain class of judgment creditors can be said to be a valid exercise of the state's police power, nevertheless, the application of the statute to Emma is constitutionally improper for the following reasons.

II.

THIS APPLICATION OF THE FINANCIAL RESPONSIBILITY ACT IS A BILL OF ATTAINDER AND A DENIAL OF DUE PROCESS

The holding that suspension of a wife's driver's license because her uninsured husband negligently operated the community vehicle is within the logic of Kesler and Reitz is based on a misunderstanding of Community Property Law.

The Court's conclusion that any differences between the legal position of Emma and that of her negligent husband constitutesa distinction without significance is based on three fallacious arguments. First, the Court contends that Emma could have avoided a license suspension based on her husband's negligence by purchasing an automobile as separate rather than community property. Perez v. Campbell, 421 F.2d 619, 623 (9th Cir. 1970). Second, it contends that Emma's legal status "is closely analogous to that of an automobile owner who permits another to drive it." Id. Finally, it contends that the legislation permitting, in effect and as interpreted, suspension of her license as a result of her husband's

negligence, "bears a real and substantial relationship to public safety on the Arizona higways." Id. at 624. All of these contentions depend on a mistaken view of a wife's property rights in a community property state such as Arizona.

Section One

The Court Below Misapplied Community Property Law

The Court states:

> The husband, or the wife, if each so desired, could purchase an automobile with separate funds and in such case the automobile would be the separate property of the purchaser. The negligent operation of such an automobile on separate business would not call into question the liability of the other spouse, nor the cancellation of the latter's license. Id. at 623.

Unfortunately, separate funds are highly unlikely to exist. Separate property consists only of property owned or claimed by either spouse before marriage, and that acquired afterward by gift, devise or descent. A. R. S. §25-213A & B. (Other minor provisions are not here relevant). All other property acquired during marriage is community property, and the personalty may be disposed of by the husband only. A. R. S. §25-211. If a wife's right to drive an automobile is made to depend on her ownership of separate funds, it will have to depend, then,

on her ability to solicit gifts and on the financial status of her dead relatives.

Not only is most of the property acquired during marriage, as a practical matter, clearly community property, but also all property acquired during marriage is presumptively community property. Porter v. Porter, 101 Ariz. 131, 416 P. 2d 564 (1966), cert. denied, 386 U. S. 957 (1967); Anderson v. Anderson, 65 Ariz. 184, 177 P. 2d 227 (1947). It has even been said that all property found in the possession of the spouses during marriage is presumptively community property. Tyson v. Tyson, 61 Ariz. 329, 149 P. 2d 674 (1944).

Moreover, this presumption is difficult to rebut, the evidence needed being variously characterized as strong, satisfactory, convincing, clear and cogent, or nearly conclusive. Porter v. Porter, supra; Kennedy v. Kennedy, 93 Ariz. 252, 379 P. 2d 966 (1963); Smith v. Smith, 71 Ariz. 315, 227 P. 2d 214 (1951); Arizona Cent. Credit Union v. Holden, 6 Ariz. App. 310, 432 P. 2d 276 (1967). Furthermore, separate funds which are comingled and not clearly traceable become community property. Franklin v. Franklin, 75 Ariz. 151, 253 P. 2d 337 (1953). And separate funds treated as community property become community even if they are traceable. Laughlin v. Laughlin, 61 Ariz. 6, 143 P. 2d 336 (1943).

The chances that a middle-class spouse would both come into possession of separate funds, and keep them sufficiently traceable to satisfy the presumption are remote.

The chances of a wife whose husband runs afoul of the Financial Responsibility laws

would do so are infinitesimal.

It could be argued that the spouses could agree that community property be held as separate property, and the wife purchase her automobile out of separate property. This argument entails several difficulties. First, at the time before the accident, pre-1965, it was not at all clear that this could be done. Not until 1969 did the Arizona Supreme Court hold that the community was severable on post-nuptial agreement of the parties. In re Estate of Harber, 104 Ariz. 79, 449 P. 2d 7 (1969). In any case, this is not the sort of legal nicety of which one about to become innocently involved with the Financial Responsibility laws is likely to be aware. Even if she were aware of it, it would hardly occur to her to sever the community in order to avoid the result in Perez v. Campbell -- a result that could not be predicted since it rests on clear misinterpretation of community property law. Furthermore, there is a practical consideration that reveals an absurdity in the Court's position reaching, perhaps, an equal protection objection. It is clear, of course, that a Financial Responsibility Act does not discriminate invidiously simply because it affects poor people more harshly than it does rich ones. Watson v. Div. of Motor Vehicles, 212 Cal. 279, 298 P. 481 (1931). Cf., Ex parte Lindley, 108 Cal. App. 258, 291 P. 638 (1930). However, the Perez Court's solution to the wife's problem imposes a double burden. Not only will the law affect her harsly because she is poor (which she could not avoid, as will be shown in Section Two of this argument), but also the Court would

require her to buy a second, separate car to avoid its operation. To create a class of poor, non-negligent wives who must buy second cars as a precaution against having their driver's licenses revoked would seem sufficiently irrational to violate even the traditional equal protection requirements of Watson, supra.

The most compelling reason against such a requirement is the need for the husband's concurrence. A wife cannot avoid revocation of her driver's license by simply agreeing with herself that the automobile bought with originally community funds is her separate property; she must get her husband to agree. She cannot take the Court's suggested remedial action on her own, yet she is deprived of her license without being able to avoid the result.

It is true that the husband would not have been able to transmute a car bought with community funds into separate property without the wife's concurrence, but then he could have avoided the result by buying insurance on the community car, which she could not have done. See Section Two, infra; see also Perez v. Campbell, 421 F. 2d 619. 624 (1970). The wife's inability to protect herself by the very action suggested by the Court indicates that the applicability of the logic of Kesler and Reitz to a non-negligent wife who owns only her community interest in the uninsured automobile is not as obvious as the Ninth Circuit Court of Appeals thought it to be. Kesler v. Dept. of Public Safety, 369 U. S. 153 (1962); Reitz v. Mealy, 314 U. S. 33 (1941)

Section Two

The Effect of the Act is a Denial of Due Process

The Court of Appeals further relied on the cases that have held that a non-negligent owner's license may constitutionally be revoked on the authority of similar Financial Responsibility laws, holding that Emma Perez' position as a community owner was analogous to them. See e.g. In re Opinion of Justices, 251 Mass. 569, 147 N.E. 681, (1925); Sullivan v. Price, 49 Ariz. 19, 63 P.2d 653, 108 A.L.R. 1156 (1937); Continental Cas. Co. v. Phoenix Constr. Co., 46 Cal. 2d 423, 296 P.2d 801, 57 A.L.R. 2d 914 (1956); Sheehan v. Division of Motor Vehicles, 140 Cal. App. 200, 35 P.2d 359 (1934).

It is important to note that in Sheehan and other similar cases the owner was indeed the owner of an automobile as separate property. These decisions may be sound where the owner has power to give or withhold his consent. But, Emma's position is not analogous to the position of the non-negligent owners in those cases cited, or to those

in all cases researched) in two critical aspects.

First, a wife owning only her community share of an automobile has no such choice to exercise against her husband -- or, indeed, in theory, against anybody else. The husband, under Arizona law, "is the head of the family and its agent in the control and management of the community." Fee v. Arizona State Tax Comm'n, 55 Ariz. 67, 70, 98, P.2d 467 (1940). The Arizona Court has further characterized the husband as the head and master of the community. City of Phoenix v. State, 60 Ariz. 369, 137 P.2d 783 (1943). Taking even this one circumstance into account, it is difficult to see how the Court could feel that Emma's argument presented "a distinction without significant difference." Perez v. Campbell, 421 F. 2d 619, 623 (1970).

Second, in all those cases, the owner could have protected himself by insuring his automobile.

In Mac Quarrie v. Mc Laughlin, 294 F. Supp. 176 (D. Mass. 1968) aff'd, 394 U.S. 456 (1969) an owner lent his car to a person who became involved in an accident. Neither owner nor driver carried automobile liability insurance. In upholding the revocation of the owner's license, the district court said the revocation violated neither the equal protection clause nor the bill of attainder clause.

> If an automobile owner can, in effect, be compelled to guarantee the honesty of the person to whom he loans his car [referring to forfeitures where the car is used to transport illicit goods] we see no constitutional impediment to compelling him to guarantee his agent's due care when the offered alternative, or escape, is the purchase of property damage insurance. Id. 294 F.Supp. 176, 178.

Plainly, in McQuarrie, Sheehan, and similar cases, the owner has an escape route available to him. One purpose of Financial Responsibility laws is to encourage owners and drivers to obtain liability insurance. City of Toledo v. Bernoir, 18 Ohio St.2d 94, 247 N.E. 2d 740 (1969). And just plainly that purpose is not served in the instant case

case because Emma Perez could not have done so. "During coverture, personal property may be disposed of by the husband only." A.R.S. §25-211B. This has been interpreted to mean, in effect, "may be disposed of only by the husband," (see e.g., Mortensen v. Knight, 81 Ariz. 325, 305 P.2d 463 (1956)), and as giving him management and control of the community. Id. Moreover, it has been explicitly held that attempts by the wife on her own accord and without authority from her husband to control and dispose of the community personalty are ineffective. Bristol v. Moser, 55 Ariz. 185, 99 P.2d 706; Richards v. Warenkros, 14 Ariz. 488, 131 P.154 (1913). Again if a wife cannot prevent revocation of her license by being scrupulously non-negligent, by controlling the use of the community car, or by insuring the car, these distinctions must make a difference to the resolution of the due process issues raised in Reitz, and the state cases cited on p.19 of this brief. On this same principle -- sole community control in the husband -- the wife cannot even satisfy the judgment while she continues living with her husband. She could live separate and

apart from her husband and attempt to satisfy the judgment out of her own earnings, which would then be separate property. A.R.S. §25-213C. She could also divorce her husband, and attempt to satisfy the judgment out of any property settlement and support she might get, and her own earnings. Better yet, she could have divorced him before he committed the negligent act and avoided both revocation and liability for the judgment. It hardly seems necessary to cite authority that encouraging such actions serves no reasonable state purpose of highway safety, and contravenes the ancient state policy of encouraging marriage and discouraging divorce. Goodwin v. Goodwin, 47 Ariz. 157, 54 P.2d 268 (1936).

Section Three

The decisions that uphold the constitutionality of state statutes similar to that being interpreted in this case (A.R.S. §§28-1162, 28-1163B and 28-1165) have uniformly looked to the purpose of the Financial Responsibility legislation, and then looked to

the effect of its enforcement to see if it reasonably forwarded any of those purposes. For example:

> The use of the public highways by motor vehicles, with its consequent dangers, renders the regulation apparent . . . . Any appropriate means adopted by the states to insure competence and care on the part of its licensees and to protect others using the highway is consonant with due process. Some require insurance . . . . New York chose to obtain the same end by providing for the revocation or suspension of a license if the holder is adjudged guilty of negligent driving . . . . As the court below has held, the effect of the statute . . . was to make the license privilege a form of protection against damage to the public inflicted through the licensee's carelessness. Reitz v. Mealey, 314 U.S. 33, 37 (1941).

See also cases cited on page 19of this brief. The Arizona Supreme Court has characterized a companion provision of the Arizona Financial Responsibility law as being based upon the necessity for

> . . . providing of security against uncompensated damages arising from operation of motor

> vehicles on our highways. Schecter v. Killingsworth, 93 Ariz. 273, 285, 380 P.2d 136 (1963).

Presumably the statutes involved in this case (A.R.S. §§28-1162, 28-1163B and 28-1165), providing for suspension of an uninsured motorist's license after a judgment has been entered against him have the same purpose.

Revoking the negligent husband's license clearly makes some sense. Revocation may encourage him to satisfy the judgment. It might make sense to revoke a non-negligent husband's license where a judgment has gone against his negligent wife. Revocation might encourage him to release community funds to satisfy the judgment. But it makes no sense at all to revoke the license of a non-negligent wife in an effort to encourage her to satisfy the judgment resulting from her husband's negligence[1]

---

1. Emma confessed judgment, but as the Court points out, "[u]nder Arizona law, she had no alternative." Perez v. Campbell, 421 F.2d 619 623 (1970), citing Donato v. Fishburn, 90 Ariz. 210, 367 P.2d 245 (1961).

when her only assets are community property of which she has no right to dispose. Will the due process clause permit the state to advance its policy by imposing liability on an innocent wife, who could have done nothing to remedy her position?

Section Four

The Application of the Act Constitutes A Bill of Attainder

The Court below thought it irrevelant that Emma could not insure the community. Perez v. Campbell, 421 F.2d 619, 624.

But the fact that this and all other escape routes were foreclosed to her is highly relevant. " A deprivation is considered preventive if it is 'escapable' -- if people affected can avoid harm by acting in accordance with the statute." Note, The Bill of Attainder Clauses and Legislative and Administrative Suppression of 'Subversives', 67 Colum. L. Rev. 1490 (1967). In fact, assuming arguendo that there were some reasonable relationship between the state's purpose and the class of wives, the reasonableness test would not save the classification from attack as a bill of attainder.

> The doctrine of reasonable classification has been developed and refined not in bill of attainder cases but in cases in which statutes have been attacked as denying equal protection of the law . . . . The specificity barred by the bill of attainder clause admits to no such test of reasonableness. That clause flatly denies Congress [or the states] the power to designate the particular individuals who will be subject to sanctions of a statute. Comment, The Supreme Court's Bill of Attainder Doctrine: A Need for Clarification, 54 Calif. L. Rev. 212, 234 (1966).

A statute is a bill of attainder if it punishes named individuals or a group of individuals without judicial trial. United States v. Lovett, 328 U.S. 303 (1946).

Because Emma has no management powers over community personalty (A.R.S. §25-211B), she was powerless to prevent her husband from driving the car and equally powerless to insure the community. Put simply, she was and is a member of an inescapable and helpless class.

She has been punished.

As the safety responsibility

> Act carries penalties for its violation it is penal in character in the aspect here presented application to a class exempted by the statute and not remedial. Such a law is to be interpreted strictly against the State and liberally in favor of the citizen. 50 Am. Jur., Statutes, sections 14, 15, 16, 407, 408, and 409. See also Tavegia v. Bromley, 67 Wyo. 93, 214 P.2d 975. City of Phoenix v. Lane, 76 Ariz. 240, 243, 263 P.2d 302, 303 (1953).

The Arizona Supreme Court is no doubt correct in characterizing the Act as penal. Thus, to the extent that decision below was based upon decisions such as Escobedo v. Dept. of Motor Vehicles, 35 Cal. 2d 870, 222 P.2d 1 (1950) and Sheehan v. Division of Motor Vehicles, 140 Cal. App. 200, 35 P.2d 359 (1934) interpreting California law, such reliance was misplaced for the reason that California's Financial Responsibility law has been deemed remedial in nature. Continental Cas. Co. v. Phoenix Const. Co., 46 Cal. 2d 423, 296 P.2d 801 (1956).

And this Court has placed no narrow limit on the meaning of punishment. "It would be archaic to limit the

definition of 'punishment' to 'retribution'. Punishment serves several purposes; retributive, rehabilitative, deterrent -- and preventive." United States v. Brown, 381 U.S. 437 (1965).

Emma, a member of an inescapable class, has been punished under a statute penal in character. "Legislative acts, no matter what their form, that apply either to named individuals or to easily ascertainable members of a group in such a way as to inflict punishment on them without judicial trial are bills of attainder prohibited by the Constitution." United States v. Lovett, 328 U.S. 303 (1946.)

III

THE ACT IN ITS APPLICATION DENIES EQUAL PROTECTION

The application of the Financial Responsibility Act to Emma denies her equal protection for two reasons.

First, she has suffered discrimination solely by reason of her membership in the class of wives, who, as we have seen, are unable to extricate themselves from the results of the Act. This classification bears no reasonable relationship to the purpose of the Act, whether it be collection of judgments or promotion of safety.

Since Yick Wo v. Hopkins, 118 U. S. 356 (1886) it has not been enough that a statute appears to be constitutionally sound.

> Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discrimination between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution. Id. at 373-374.

Second, a penalty has been imposed on Emma although she has broken no law. As shown in Section Two, p.19 supra, Emma's situation is not analogous to that of other owner-driver cases for the reason that she had no control

over community personalty. Neither has she committed any offense against the Financial Responsibility laws save that of being impoverished. Yet the laws are uniformly so-called "first-bite" laws.[1] They do not come into operation until an uninsured driver has become involved in an accident.

In a recent decision this Court defined again the boundaries of the equal protection clause.

> In the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect. . . . A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it. [Citations omitted].
>
> . . . .
>
> . . . It is enough that the State's action be rationally based and free from invidious discrimination. Dandridge v. Williams, 90 S. Ct. 1153, 1161-1162 (1970).

Is there a conceivable state of facts to justify ap-

1. "The underlying assumption of these laws was that they would promote safety by isolating bad drivers after the first accident and making other drivers more careful due to the threat of requiring insurance in the event of an accident." L. Timm, A Survey of Financial Responsibility Laws and Compensation of Traffic Victims: A Proposal for Reform, 21 Vand. L. Rev. 1050, 1051 (1967-1968).

plication of the Act to a class comprised of non-negligent wives who, because of local community property laws, are powerless to prevent negligence on the part of their husbands or to insure the community or to pay a judgment rendered against the community?

The principal purpose of the Act is to promote payment of judgments. Emma can not release community funds for this purpose. A secondary purpose may be to encourage owners and drivers to secure automobile liability insurance. Emma can not expend community funds for this purpose.

Since neither of the state's avowed purposes is served by revoking Emma's license, it seems plain that the application of the Act to her is invidiously discriminatory.

CONCLUSION

A citizen, helpless because of the state's community property law to prevent the consequences of the Financial Responsibility Act, has lost the right to drive.

This deprivation is constitutionally impermissible as a bill of attainder, a denial of due process, and a denial of equal protection.

We respectfully urge this Court to vacate the decision of the Ninth Circuit Court of Appeals in Perez v. Campbell, 421 F. 2d 619 (1970).

Respectfully submitted,

Heather Sigworth, Attorney for
National Organization for
Women, Amicus Curiae
College of Law
University of Illinois
Urbana, Illinois

William D Browning

William D. Browning, of
Counsel
Estes, Browning & Zlaket
909 Transamerica Building
Tucson, Arizona 85701

CERTIFICATE OF SERVICE

I hereby certify that I have served upon

GARY K. NELSON
The Attorney General
By Robert H. Schlosser
Assistant Attorney General
Arizona Highway Department
206 South 17th Avenue
Phoenix, Arizona 85007

one copy of the foregoing Brief; and upon

WINTON WOODS
College of Law
University of Arizona
Tucson, Arizona

one copy of the foregoing Brief, this 25th day of November, 1970.

Heather Sigworth

HEATHER SIGWORTH
Attorney for the National
Organization of Women,
Amicus Curaie

William D Browning

WILLIAM D. BROWNING
Estes, Browning & Zlaket
of Counsel